

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Robert Lee Foster, #194085,)	C/A NO. 3:10-1469-CMC-JRM
)	
Plaintiff,)	
)	ORDER
v.)	
)	
Spartanburg City Police Department and)	
Crime Lab; Spartanburg County; Sheriff)	
Department Crime Lab of Spartanburg)	
County; Tony Fisher; Chuck Wright;)	
Officer Mynlor Beach; and Sgt. Ashley C.)	
Harris,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint brought pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation. On July 8, 2010, the Magistrate Judge issued a Report recommending that Plaintiff's motion to proceed *in forma pauperis* ("*ifp*") be denied, that Plaintiff be given an opportunity to pay the full filing fee, and that the matter be dismissed without prejudice and without issuance and service of process if Plaintiff does not pay the filing fee. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on July 12, 2010.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the Report and therefore adopts and incorporates it as part of this order. Plaintiff's objections are without merit.

Plaintiff's motion to proceed *in forma pauperis* (*ifp*) is **denied**. Plaintiff shall have until **September 20, 2010**, to pay the full filing fee for this matter (\$350.00).¹ Should Plaintiff pay the filing fee, this matter shall be referred to the Magistrate Judge to conduct a review of Plaintiff's complaint under § 1915A. If Plaintiff does not pay the full filing fee by September 20, 2010, or seek an extension of time in which to do so, this case shall, by additional order of this court, be dismissed without prejudice and without service of process.²

¹Payment should be made to: *Clerk, U.S. District Court*, 901 Richland Street, Columbia, South Carolina 29201.

²As noted by the Magistrate Judge in the Report, to the extent Plaintiff challenges the validity of his conviction and seeks release from incarceration, a § 1983 civil action is not the proper action to challenge the constitutionality of his continued incarceration. *Heck v. Humphrey*, 512 U.S. 477 (1994). Instead, Plaintiff should pursue a habeas action after exhausting state court remedies. 28 U.S.C. § 2254.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 26, 2010

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